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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of
Petition for Waiver Filed by

West River Cooperative Telephone Company
State Line Telecommunications, Inc.

Concerning the Definition of "Study Area" Contained in the
Part 36 Appendix-Glossary of the Commission's Rules

AAD 95-124

CC: 96-45

To: Chief, Common Carrier Bureau

**REQUEST FOR REMOVAL OF WAIVER CONDITION
CONSISTENT WITH COMMISSION POLICY**

West River Cooperative Telephone Company, and its wholly-owned subsidiary, State Line Telecommunications, Inc. (collectively "West River") submit this request for the removal of the "cap" on the Universal Service Fund ("USF") cost allocation support payments established by the Commission's Order adopted April 11, 1996, with respect to West River's South Dakota study area.¹ The Order authorized the transfer of local exchange facilities consisting of three (3) exchanges serving 2,341 lines into West River's existing study area. As a condition to the grant of study area waiver, the Order imposed a limitation or "cap" on USF disbursements to the West River study area of \$265,007 per annum. Consistent with the overarching Commission policy conclusions now established by the Memorandum Opinion and Order on Reconsideration, released September 9, 1999,² West River requests that its individual

¹ Memorandum Opinion and Order, AAD 95-124, 11 FCC Rcd 11513 (1996) ("Order").

² Memorandum Opinion and Order on Reconsideration, AAD Nos. 93-93, 95-72, 95-30, 97-21, 97-23, 97-117, 98-44, 98-53, DA 99-1845, released September 9, 1999 ("Cap Removal Order").

USF cap be removed as of January 1, 2000.³

West River expects that many other similarly-situated companies will be seeking removal of their individual USF caps consistent with the Bureau's newly articulated policy conclusions. In order to avoid the administrative burden of repeatedly applying its new policy to a multitude of almost identical requests, West River respectfully suggests that the Commission simply clarify, on its own motion, its policy by lifting the 57 remaining USF caps.

In the absence of this clarification, West River respectfully requests expedited action in light of the consistency of this request with the recent policy conclusions and to accommodate the completion of the USF administration prior to January 1, 2000. In support thereof, West River submits the following:

I. Background

On September 6, 1995, West River and 18 other small local exchange carriers filed a joint petition with US West Communications, Inc. for waiver of the frozen study area boundaries. On April 11, 1996, the FCC released its Order authorizing the removal of exchanges from the US West South Dakota study area and allowing West River to transfer three (3) exchanges serving 2,341 access lines into its existing study area subject to the condition that, absent explicit approval from the Bureau, the annual USF support provided to the existing study area would not exceed the estimated post-upgrade amount of \$265,007 specified in the joint

³ Although this Request references an effective date of January 1, 2000, West River does not waive its right to raise issues in the future with respect to the applicability of the Commission's policy or rules to prior periods beginning May 8, 1997.

petition.⁴ The National Exchange Carrier Association (“NECA”) was ordered not to distribute USF payments exceeding the limitation.

In the Order, the Bureau also acknowledged appropriately that

it is likely that new USF rules, implementing new statutory mandates, will alter the distribution of USF support to high-cost areas and require us to revisit these issues following implementation of the 1996 Act.⁵

Although West River was aware in 1995 that the facilities to be purchased were substandard, and that the Bureau would likely impose a limit on USF recovery, West River, nevertheless, fully expected that a rational network cost recovery application would be ultimately resolved consistent with the public interest.⁶ West River believed that rational cost recovery would be possible by removal of the limit or the implementation of a new USF plan, under which the reasonable high costs would be addressed. The West River study area’s 2000 USF receipts, based on data forwarded from the Universal Service Administrative Corporation (“USAC”) to the Commission on October 1, 1999, would be \$284,975.52. Grant of this request will allow West River to recover fully the USF payments related to the costs incurred in providing service to rural South Dakota.

⁴ Order at ¶ 32.

⁵ Id.

⁶ Since purchasing the exchanges, West River has upgraded the digital switch facilities, buried cable, and fiber for both its former exchanges and the acquired exchanges. Since 1996, West River has invested approximately \$2,951,985 throughout its study area to upgrade its facilities for improved service to its customers.

II. Removal of West River's Cap is Consistent with Established Commission Policy

On September 9, 1999, the Commission issued its Cap Removal Order, addressing petitions for waiver and reconsideration of the USF conditions applied to 32 study areas. While the Commission noted its policy of monitoring USF impact on carriers involved in study area changes and capping carriers at some estimate of post-upgrade costs, the Commission correctly concluded that limiting the duration of those caps is appropriate and in the public interest.⁷ Accordingly, the Commission granted petitioners' requests to lift the individual caps placed on their high cost loop support on a going-forward basis.⁸ As of January 1, 2000, the high cost loop support for the 32 study areas will then be based upon the average cost of all their lines.

The Commission acknowledged that "caps of unlimited duration may hinder petitioners' incentive and ability to extend service to previously unserved areas, as well as to upgrade service to their existing customers."⁹ The Commission also determined that "limiting the petitioners to the high cost loop support estimated in their original petitions, in perpetuity, is not necessary to accomplish the [Commission's] policies . . ." The Commission "concluded that . . . the individual caps placed on the carriers' high cost loop support have served their purpose . . ."¹⁰ The Commission also recognized correctly that lifting the caps on petitioners' high cost support will increase the affected LECs' incentives and ability to extend service to previously unserved

⁷ Cap Removal Order at ¶ 9.

⁸ Cap Removal Order at ¶ 10.

⁹ Id.

¹⁰ Id.

areas and upgrade their networks.”¹¹

West River’s conditions are effectively identical to those petitioners addressed in the Cap Removal Order. Therefore, removal of West River’s individual USF cap is both warranted by, and consistent with, the Commission’s conclusions and policy enunciated in the Cap Removal Order. Like the petitioners addressed in that order, West River purchased exchanges several years ago and, in conjunction with its request for study area waiver, provided a reasonable estimate of the costs to upgrade the subject facilities for the provision of basic telephone service to existing and new customers. Following the grant of study area waiver, West River proceeded to deploy service and upgrade the facilities according to its plans. Continuing to limit West River to the high cost loop support estimated in its original petition is not necessary to accomplish the Commission’s policies. Further, continued application of the individual cap imposed in April of 1996 will hinder West River’s incentive to continue to invest in advanced services networks and to upgrade existing service, and would jeopardize West River’s ability to maintain reasonably comparable rates for modern services.

III. Conclusion

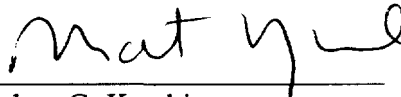
Consistent with the Commission’s policy established in its Cap Removal Order, West River requests that the individual USF cap established by the Commission’s Order be removed as of January 1, 2000. The West River study area’s 2000 USF receipts, based on data forwarded from USAC to the Commission on October 1, 1999, would be \$284,975.52. Accordingly, West

¹¹ Cap Removal Order at ¶ 10. See also Federal-State Joint Board on Universal Service: Promoting Development and Subscribership in Unserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, CC Docket No. 96-45, FCC 99-204 (rel. Sept. 3, 1999).

River requests that the Commission lift the individual cap placed on its high cost loop support on a going-forward basis so that, as of January 1, 2000, West River's high cost loop support payments will be based upon the average cost of all its lines. Adequate USF funding is necessary to allow West River to continue to maintain and upgrade its facilities for the provision of universal service to its rural South Dakota study area. Expedited grant of this request will serve the public interest by ensuring that West River receives adequate universal service funding to recover the costs of its investment and thereby meet its current and future service requirements.

Respectfully submitted,

West River Cooperative Telephone Company
State Line Telecommunications, Inc.

By 
Stephen G. Kraskin
David Cosson
Margaret Nyland
Its Attorneys

Steven Watkins
Telecommunications Management Consultant

Kraskin, Lesse & Cosson, LLP
2120 L Street, NW
Suite 520
Washington, DC 20037
202/296-8890

November 12, 1999

CERTIFICATE OF SERVICE

I, Shelley Davis, of Kraskin, Lesse & Cosson, LLP, 2120 L Street, NW, Suite 520, Washington, DC 20037, hereby certify that a copy of the foregoing "Request for Removal of Waiver Condition Consistent with Commission Policy" of West River Cooperative Telephone Company and State Line Telecommunications was served on this 12th day of November, 1999 by hand delivery to the following parties:



Shelley Davis

Larry Strickling, Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. Room 5-C450
Washington, DC 20554

Lisa Zaina, Acting Deputy Bureau Chief
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-B303
Washington, DC 20554

Irene Flannery, Chief
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W., Room 5-A426
Washington, DC 20554

Ms. Adrian Wright
Accounting Policy Division
Common Carrier Bureau
Federal Communications Commission
445 12th Street, SW, Room 5-B510
Washington, DC 20036